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BY THE SENATE,
February 11th, 1860.

Read, and ordered to be printed.

MEMORIAL

OF THE

VISITORS AND GOVERNORS

OF ST. JOHN'S COLLEGE,

AND THE

DECISION

OF THE

COURT OF APPEALS.

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MEMORIAL.

To the Honorable,

The General Assembly of Maryland:

The Memorial of the Visitor's and Governors of St. John's College, respectfully represents that by virtue of their charter, the Act of 1784, ch. 37, many of its citizens entered into a contract with this State, by which they paid into the State Treasury large sums of money, amounting to about thirty-two thousand dollars to found St. John's College, the Institution over which they preside, in consideration that the State granted that Charter and an annuity of seventeen hundred and fifty pounds to carry on this College forever, and also imposed certain taxes, the proceeds of which were appropriated "*to remain in the hands of the State Treasurer, subject to the order of your Memorialists for the payment of this annuity.*"

That accordingly St. John's College was founded and established by the payment of this sum of thirty-two thousand dollars, and the taxes aforesaid were levied and paid into the State Treasury and there remained subject to the order of your Memorialists for carrying on this College until under the Act of 1805, ch. 85. professing to repeal the 19th section of the Charter which granted this annuity, the Treasurer refused longer to pay the same.

That since that time this annuity has been withheld by the Treasurer except certain parts thereof, which future Acts of of Assembly directed to be paid, and that the whole of the said annuity, and large sums for the arrearages thereof, are still due and payable to your memorialists, although there are remaining in the hands of the Treasurer of the proceeds of the said taxes in legal contemplation appropriated to the payment of this annuity and arrearages sums of money more than sufficient for that purpose.

Your Memorialists further state that by Resolution No. 4, of the last session of the General Assembly certain questions in relation to the rights of your Memorialists in the premises,

were submitted by the Legislature to the Judges of the Court of Appeals, who recently have unanimously decided the same in favor of the rights of your Memorialists as will appear by a copy of their opinion herewith exhibited.

Your Memorialists respectfully state that they are advised that the effect of this opinion of the judges of the Court of Appeals, is to determine that your Memorialists are entitled to the continuance of the annuity of the seventeen hundred and fifty pounds, and to the arrearages of that annuity from the time that the same or any part thereof, has been from them withheld.

Your Memorialists further respectfully state that they are advised that they have a legal remedy to enforce the payment of the said annuity and arrearages, but that they owe it to themselves as a Corporation, holding high and responsible trusts for the benefit of the State and the public, and to the State as one of the parties to this contract, to pray that the General Assembly will relieve them from this unwilling duty.

The course taken by the Legislature at its last session, in submitting these questions for the opinion of the highest judicial tribunal of the State, indicates that no reluctance on the part of the State can exist to give effect to these opinions when pronounced.

These opinions, now for the first time, announce that the Acts of Assembly complained of are unconstitutional, and in violation of a contract made by the State with its citizens for the performance of which the faith of the State was formerly pledged.

Your Memorialists do, therefore, confidently trust that the General Assembly, acting under the solemn sanctions of that Constitution, will be most ready to conform to its obligations and to redress the wrongs committed by its violation; they do, therefore, most respectfully pray that the General Assembly may pass a law for the adjustmentand settlement of their claim, and that the same, together with the annuity secured by their Charter may be paid to them in such manner as the wisdom of the Legislature may prescribe and the ends of justice may require, &c.

THOMAS G. PRATT,
FRANK H. STOCKETT,
A. RANDALL,
Committee of St. John's College.

Annapolis, 10th January, 1860.

DECISION

OF THE

Court of Appeals of Maryland.

This case originates out of a resolution, No. 4, passed by the General Assembly of Maryland at its session of 1858.

The questions in relation to which the opinion of the Judges of the Court of Appeals is desired, are:

1st. Whether the annual appropriations made by the 19th section of the Act of 1784, ch. 37, of the sum of seventeen hundred and fifty pounds, current money, to be applied to the payment of salaries, &c., constitute a *contract* on the part of the State, *under all the circumstances of the case*, which could not be legally repealed by the Act of 1805, ch. 85?

2nd. Whether this latter act is not in violation of the tenth section of the first article of the Constitution of the United States, which declares, that no State shall pass any law impairing the obligation of contracts?

3rd. Whether the former Act, with the circumstances of the case, constituted such a contract as would, if entered into between individual citizens, be legally binding upon them?

These questions necessarily resolve themselves into but one, and that, the first of the series. For, if the Act of 1784, ch. 37 created a valid and binding contract, it cannot be denied, and has not been in the argument of the cause, that it was incompetent for the Legislature to annul or alter it without the consent of the parties.

We understand the language of the resolution, as confining our attention exclusively to the terms of the Acts of 1784, ch. 37, and 1805, ch. 85; and the circumstances connected with

their passage, and so understanding its purport, we shall omit all notice of circumstances occurring subsequently. The record presents other questions, which in an ordinary case, we might deem it proper to consider; but this case is *sui generis*, unlike an ordinary suit. The proceedings have been instituted under the authority of the Legislature, for the sole purpose of obtaining the opinion of the Judges of this Court upon certain specific questions propounded by the resolution, and we, therefore, consider it proper to confine ourselves to those questions.

The State on application of certain public-spirited citizens granted the charter of St. John's College. The preamble of the act for founding the college sets out fully the motives of both parties: It states that, "it appears to this General Assembly, that many public spirited individuals, from an earnest desire to promote the founding a college or seminary of learning on the Western Shore of the State, *have subscribed and procured subscriptions* to a considerable amount, and there is reason to believe that very large additions will be obtained to the same throughout the different counties of the said shore, if they are made capable in law to receive and apply the same towards founding and carrying on a college or general seminary of learning with such salutary plan, and with such legislative assistance and direction, as the General Assembly might think fit, and this General Assembly, highly approving those generous exertions of individuals, are desirous to embrace the present favorable occasion of peace and prosperity, for making lasting provision for the encouragement and advancement of all useful knowledge and literature through every part of the State." The third section of the Act constituted certain persons agents *"for soliciting and receiving"* subscriptions to the college; and the *nineteenth* section "to provide a permanent fund for the further encouragement and establishment of the said college:" Enacted, *"That the sum of one thousand seven hundred and fifty pounds current money, be annually and forever hereafter given and granted, as a donation by the public, to the use of the said college,"* &c.

By the first section of the Act of 1805, ch. 85, this donation was discontinued and ordered to remain in the treasury, subject to the appropriation of the Legislature to literary purposes, and for disseminating learning in the several counties of the State.

It is admitted on behalf of the State that individuals and corporations did of their own funds, contribute towards the founding of the college the sum of *thirty-two thousand dollars.*

Confining ourselves to this state of the case, the simple question is—was the Act of 1784, *under the circumstances, a contract* within the meaning of the 10th section of the first article of the Constitution of the United States?

By the fifth article of the Constitution of the United States it is expressly provided, that the "*constitution* &c. &c., shall be the *supreme law* of the land, and the judges in every State shall be bound thereby, *anything in the constitution or laws of any State, to the contrary, notwithstanding.*" And by the 2nd section of the 3rd article, "the judicial power shall extend to *all* cases in law and equity arising under this constitution," &c.

This being so, the duty of this court is plain. It is to ascertain whether, under the decisions of the Supreme Court of the United States the Act of 1784, ch. 37, is a contract which the Legislature could not impair or annul. That it was such, on the principles laid down by the Supreme Court in its interpretation of the meaning of the word "*contract*" as used in the 10th section of the first article of the constitution, in our judgment ought not to admit of a doubt. We content ourselves with a citation of some of the language employed by the highest tribunal known to the country.

The leading and controlling case on this subject is that of the Dartmouth College vs. Woodward, reported in the 4th volume of Wheaton, commencing at page 518. This case was argued at great length and with rare ability. The judgment pronounced in it has been the settled law of the land ever since. In that case the charter of the college had been granted by the Crown in the year 1769. Subsequently, the State of New Hampshire passed certain acts whereby the charter was altered, principally by increasing the number and altering the mode of the *appointment* of trustees, and creating a board of overseers. This was done without the assent of the corporation.

On such a case, *Chief Justice Marshall* in delivering the opinion of the court said: "It can require no argument to prove, that the circumstances of this case constituted a contract. An application is made to the crown for a charter to incorporate a religious and literary institution. In the application, it is stated that large contributions have been made for the object, which will be conferred on the corporation, as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. *Surely in this transaction every ingredient of a complete and legitimate contract is to be found.*" Having determined that the charter was a contract, in the broad sense of that term, he proceeds to inquire, whether it be *such* a contract as is *protected by the constitution?* He distinguishes between *private* and *public* corporations; and says: "If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the State of New Hampshire, as a government, be alone interested in its transactions, the subject is

one on which the Legislature of the State may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution." He demonstrates by a course of cogent reasoning that the grant of the crown was not one of political power merely to be exerted for governmental purposes; and after giving many illustrations of the difference between a public and a private corporation observes: "A private donation vested in a trustee for objects of a general nature, does not therefore become a public trust, which the government may, at its pleasure, take from the trustee, and administer in its own way. *The truth is, that the government has no power to revoke a grant even of its own funds, when given to a private person, or corporation for special uses.*"

These doctrines have been repeatedly recognized and asserted by the courts of this country, as well in this, as in other States. Until overruled by the same tribunal which announced them, they are the law of the land. It is useless, therefore, to cite from elementary writers and adjudged cases evidences of their affirmation. In response therefore to the questions propounded by the resolution to the Court of Appeals, we give it as the opinion of that Court:—

First. That the annual appropriation made by the 19th section of the Act of 1784, ch. 37, of the sum of seventeen hundred and fifty pounds, current money, to be applied to the payment of salaries, &c., constitutes under all the circumstances of the case, a contract on the part of the State which could not be legally repealed by the Act of 1805. ch. 85.

Second. That the Act of 1805, ch. 85, was a violation of tenth section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

Third. That the Act of 1784, ch. 37, with the circumstances of the case, constitutes such a contract as would, if entered into between individual citizens, be legally binding upon them.

And so the Judges of the Court of Appeals certify.

Witness their Signatures—

JNO. C. LEGRAND,
JOHN B. ECCLESTON,
WILL. H. TUCK,
JAS. L. BARTOL.